

REMARKS/ARGUMENTS

In the January 3, 2006 Office Action, the Examiner objected to the drawings, rejected the claim as indefinite and objected to the Abstract. The Office found the 12 June 2006 amendment to not be in compliance with 37 CFR 1.121 for the following reasons:

- (1) The amendments to the specification and the abstract were not presented on separate sheets;
- (2) Amendments to Drawings, are not labeled as “Replacement Sheets”, “New Sheet”, etc.; and
- (3) The amendment did not use the proscribed claim status identifiers.

To overcome the alleged informalities in the 12 June 2006 amendment, the Applicant has amended his prior amendment to place the amendments to the specification and the abstract on separate sheets and to use the proscribed claim status identifiers. Additionally, the Applicant has inserted the phrase “New Sheet” into the header of the drawing of new Figure 32. In view of these revisions, the Applicant respectfully submits that this amendment to the 12 June 2006 amendment overcomes any basis to hold the prior amendment informal.

The Applicant respectfully traverses the Examiner’s objection and rejections and submits that the claimed subject matter is allowable and solicits an indication of allowability at an early date.

Support for the Amendments

The revised Abstract is a paraphrasing of Claim 1 as originally filed, thus the new Abstract does not add any new matter.

New Figure 32, and the text referring to this figure merely illustrate the auxiliary shelf which was described in the application as originally filed. *See* paragraphs 10 through 29 as originally filed.

Because these amendments are supported by the application as originally filed, the Applicant respectfully submits that these amendments do not add new matter to the present application.

The Drawings

In the January 3, 2006 Office Action, the Examiner objected to the drawings as not showing: (a) a first member; (b) a second member; (c) a third member; (d) a spring ~~means~~ member; (e) a mounting member; (f) a first link member; (g) a second link member; (h) an auxiliary shelf; (i) an auxiliary shelf support; and (j) a rotating member. The applicant respectfully traverses the Examiner's position and submits that the figures, as originally filed, show each feature of the claimed subject matter.

(a) a first member;

Support connecting member 360, which is shown in several figures including figures 2, 17 and 18, is an embodiment of the first member.

(b) a second member;

Box member 150, which is shown in several figures including figures 1, 2 and 3, is an embodiment of the second member.

(c) a third member;

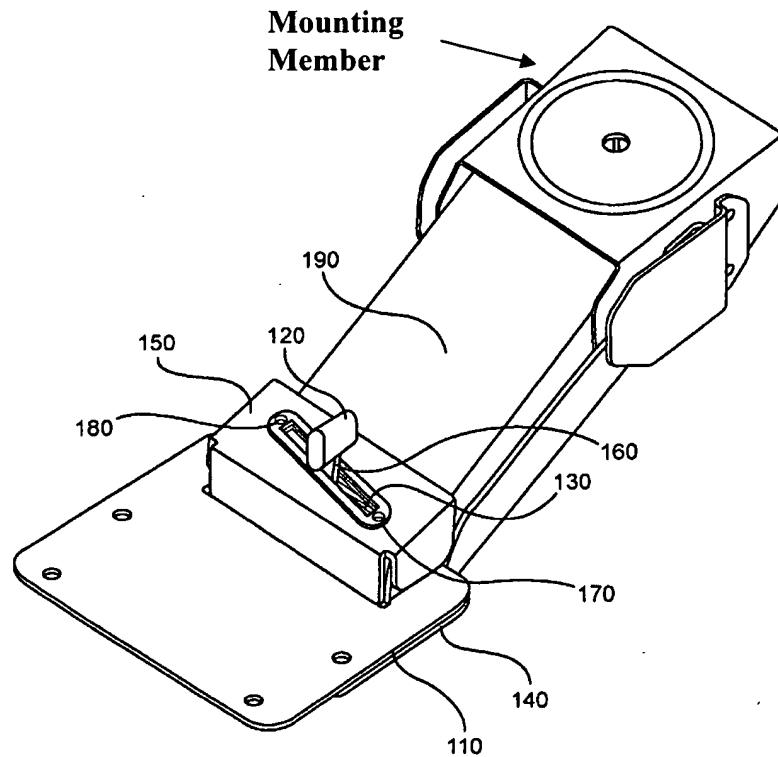
Bar 160, which is shown in several figures including figures 1, 2 and 24, is an embodiment of the third member.

(d) a spring ~~means~~-member;

Spring member 330, which is shown in figure 3 is an embodiment of the spring member.

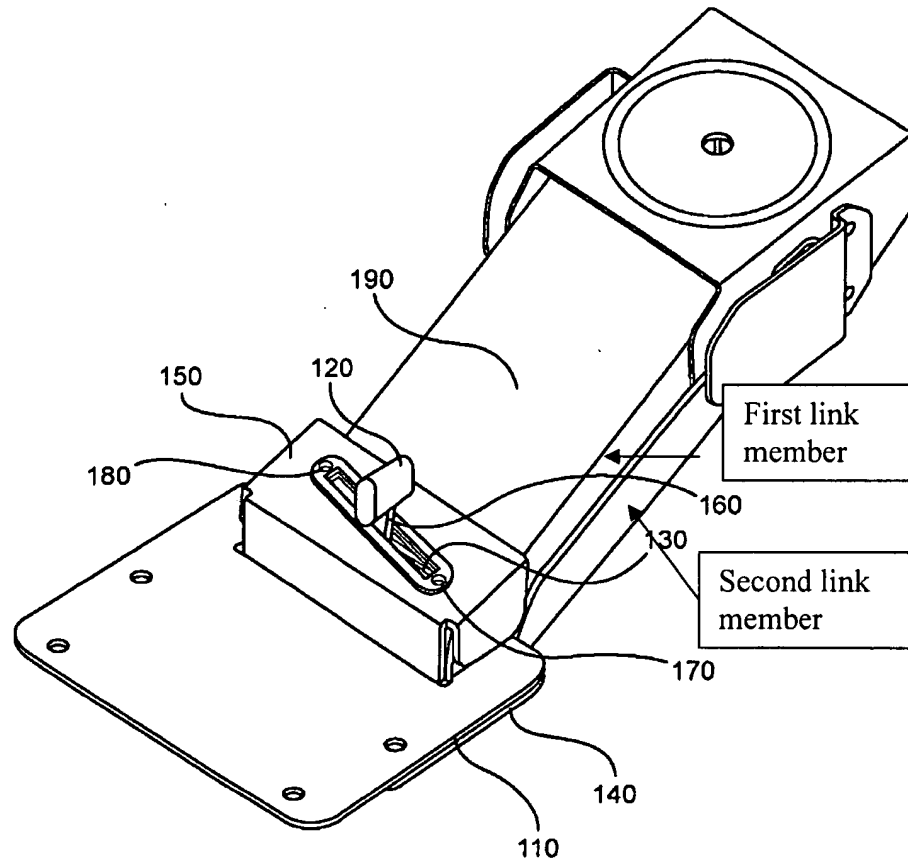
(e) a mounting member;

An embodiment of the mounting member is illustrated in Figure 1 which has been reproduced below with label to identify the mounting member.



(f) a first link member and a second link member;

Figure 1 (reproduced again below) also, albeit without call out numbers, illustrates an embodiment of both the first link member and the second link member.



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(h) an auxiliary shelf;

To ensure that the above-identified application has a drawing of each feature of the claimed subject matter, the Applicant has added Fig. 32 which illustrates the auxiliary shelf disclosed in the application as originally filed on the mechanism of Fig. 1.

(i) an auxiliary shelf support;

Platform support 110, which is shown in figures 1, 2 and 3, is an embodiment of the auxiliary shelf support.

(j) a rotating member

Bar 160, which is shown in several figures including figures 1, 2 and 24, is an embodiment of the rotating member.

As the figures, as amended, show each feature of the claimed subject matter, the Applicant respectfully requests that the Examiner withdraw his objection to the drawings.

The Indefiniteness Rejection

The Examiner rejected the claims as indefinite because: (1) the Examiner considers the “spring means” of claim 1 to be a means-plus-function limitation; (2) the Examiner is unfamiliar with the phrase “manner effective”; and (3) the Examiner cannot find antecedents for matters which are inherent and thus do not require an express antecedent. The Applicant respectfully traverses the Examiners positions.

Nonetheless, to expedite the prosecution of the above-identified application, the Applicant has made several amendments which are not believed to change the scope of the claims.

In the first instance, the Applicant has changed the phrase “spring means” in claim 1 to – spring member --. Hopefully this amendment will clarify that the limitation is not in a means-plus-function format and thus does not need to specify a function.

Next, the Examiner appears to have difficulty with the common claim phrase “manner effective”. The Applicant respectfully submits that this phrase is readily understood

by one of ordinary skill in the relevant art and that the Examiner has submitted no evidence to the contrary. This phrase simply denotes a way to achieve the stated result (it is not the equivalent of a means-plus-function because the limitation expressly recites the structure involved – a rotatable connection.

The Applicant further notes that this “manner effective” is a phrase that is commonly used in patent claims. *See e.g.* U.S. Patents Nos. 6,998,540 (Claim 7 “A multi-layer circuit board comprising: a first and a second insulating layer and a first conductive layer which is disposed between said first and said second insulating layers, wherein a first aperture is formed through said first conductive layer, said first insulating layer and said second insulating layer in a **manner effective** to . . .” Emphasis added.); 6,979,359 (Claim 15 “The method as claimed in claim 14, wherein the filter unit being positioned in the second airspace, and the fan section interconnected with the filter section in a **manner effective** to . . .” Emphasis added); and 6,888,061¹ (Claim 19 “The optoelectrical capsule of claim 16 further comprising positioning said feedthrough interconnection assembly in a **manner effective** to . . .” Emphasis added.)

Because there is no evidence that one of ordinary skill would not understand the claim limitation, the Applicant respectfully submits that the rejection of Claim 2 based on this phrase must be withdrawn. (The Examiner must establish a *prima facie* showing to support any rejection).

Finally, the Examiner alleges that several terms in the claims are indefinite because the antecedent is unclear. While the Applicant disagrees with the Examiner in each instance, the Applicant has changed the definite article to an indefinite article in several instance

¹ The undersigned prosecuted the application that matured into this patent.

to expedite prosecution. However, in each instance to which the Examiner objects, the Applicant respectfully submits there is an inherent antecedent. Furthermore, the Examiner has not made a *prima facie* showing, in each instance, that there is not an inherent antecedent. For this reason alone, the rejection is improper and must be withdrawn.

The examination of patent claims for compliance with 35 U.S.C. § 112, ¶ 2 is guided by the Manual of Patent Examining Procedure ("MPEP"). The current edition is the eighth (2001). Section 2173.05(e) *Lack of Antecedent Basis* states:

Obviously, however, the failure to provide explicit antecedent basis for terms does not always render a claim indefinite. ***If the scope of a claim would be reasonably ascertainable by those skilled in the art, then the claim is not indefinite.*** *Ex parte Porter*, 25 USPQ2d 1144, 1145 (Bd. Pat. App. & Inter. 1992) ("controlled stream of fluid" provided reasonable antecedent basis for "the controlled fluid"). (Emphasis added).

Particularly pertinent to the issue raised by the Examiner, the MPEP continues by stating:

Inherent components of elements recited have antecedent basis in the recitation of the components themselves. For example, the limitation "the outer surface of said sphere" would not require an antecedent recitation that the sphere has an outer surface. *See Bose Corp. v. JBL, Inc.*, 274 F.3d 1354, 1359, 61 USPQ2d 1216, 1218-19 (Fed. Cir 2001) (holding that recitation of "an ellipse" provided antecedent basis for "an ellipse having a major diameter" because "[t]here can be no dispute that mathematically an inherent characteristic of an ellipse is a major diameter").

More particularly, the Applicant has not shown that:

- 1) "an auxiliary support mechanism distal to the mounting member" does not, inherent, have an end; and
- 2) when two planes intersect, they do not inherently form an angle

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The Applicant notes that it is the Examiner's burden to make a *prima facie* showing before making a rejection. *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984) (The examiner bears the initial burden on any ground of presenting a *prima facie* case of unpatentability.) Here, the Examiner has not done so. Thus, the Examiner has not made a *prima facie* showing of indefiniteness. In the absence of a *prima facie* showing of indefiniteness, the rejection must be withdrawn.

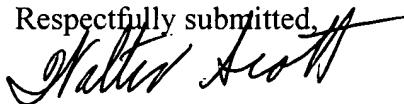
The Applicant respectfully petitions to have the Office Action withdrawn and resent. The Applicant notes that the correct address for the Applicant's representatives was in the file wrapper as of March 16, 2005 (the IFW copy has a receipt date of March 16, 2005). Nonetheless, Eight and a half months latter, the Office Action was sent to Coudert Brothers, the firm where the Applicant's representatives had been prior to March 16, 2005. Moreover, the Applicant notes that on the date the Office Action was mailed, Coudert Brothers had been dissolved. For these reasons, the present Office Action should be withdrawn and resent.

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If the Applicant's petition to have the Office Action withdrawn and resent, the Applicant respectfully requests a two month extensions of time to reply to the January 3, 2006 Office Action. The Applicant submits that no further extension of time nor fees for net addition of claims are required. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR §1.136(a), and any fee required therefore is hereby authorized to be charged to Deposit Account No. 16-0605.

Dated: August 31, 2006

Respectfully submitted,

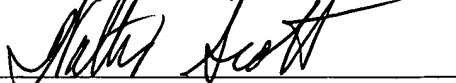


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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents
P.O. Box 1450, Alexandria, VA 22313-1450 on August 31, 2006.


Walter Scott